



# **Judicial Council of California**

## **Administrative Office of the Courts**

**Trial Court Financial Policies and Procedures**

**Procedure No.**  
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# **CONTRACT ADMINISTRATION**

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# Contract Administration

## 1.0 Purpose

The purpose of this policy is to convey the trial court's procedures and guidelines for contract administration. The policy addresses the documentation and actions required to protect the trial court's interests and ensure supplier and contractor performance.

## 2.0 Policy Statement

The trial court shall ensure that:

- The procurement of goods and services is appropriately documented
- Suppliers and contractors comply with the terms of their contracts and applicable laws, rules, and regulations
- Performance progresses satisfactorily
- Problems are identified that may threaten performance
- Contractual disputes are addressed and settled according to sound administrative practice and business judgment.

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## 6.7 Reporting

## 7.0 Associated Documents

### 4.0 Application

This policy applies to all trial court officials and employees who are involved in the procurement of goods and services and who are responsible for the monitoring and administration of supplier and contractor performance.

### 5.0 Definitions

1. **Certificate of Insurance.** A document that provides evidence that an insurance policy has been written and that includes a statement of the policy coverage in general terms.
2. **Change Order.** Documentation of informal and/or immaterial changes to a contract, usually signed by the project managers of each party. A change order may lead to a contract amendment.
3. **Contract.** An agreement between two parties to perform an action in return for some consideration (compensation). The contract defines the scope, schedule, consideration, and general terms and conditions which the parties agree to abide by under the agreement.
4. **Contract Administration.** The post-award administration of a contract to ensure compliance with the contract terms by both the contractor and the trial court, in accordance with applicable rules, laws, and regulations.
5. **Contract Amendment.** A formal contract modification authorized and signed by the contracting parties that describes a material change to the contractor's originally contracted work, price, time for performance, or other contract terms and conditions, and specifies cost and time impacts regardless of whether they are increases, decreases, or zero.

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6. **Contract Claim.** A demand or assertion by one of the parties to a contract made in writing and seeking the payment of money, adjustment or interpretation of contract, terms, or other appropriate relief.
7. **Contract Dispute.** A difference of opinion between contracting parties regarding the meaning and interpretation of the contract language, specifications, schedule, price, or other related issues that generally impact performance, completion, payment, amendments, claims, or other contractual rights.
8. **Contract Modification.** Any written alteration in an existing contract's specifications, delivery point, rate of delivery, contract period, price, quantity, or other provision. Modifications can be either bilateral or unilateral and include actions such as change orders or contract amendments.
9. **Contract Suspension.** A temporary delay of contract performance initiated by a written notice from the trial court to the contractor.
10. **Cure Notice.** A formal notice provided to a contractor that is in default of its contractual obligations. The notice provides description of the default, a prescribed time period in which the contractor must cure the deficiency and demonstrate that contract performance will not be jeopardized. Failure to satisfy the Cure Notice may be cause for the trial court to issue a Notice of Default.
11. **Force Majeure.** A contract clause that protects the parties to a contract in the event that all or part of a contract cannot be performed due to causes that are outside their control and could not be avoided by the exercise of due care.
12. **Notice of Default.** A written notice to convey a material contract deficiency that must be immediately remedied (i.e., cured). Failure to properly respond to the notice and address the alleged default may give rise to termination for cause proceedings.

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13. **Purchase Order (P.O.).** A form of contract used to document a purchase transaction (usually for goods). Purchase orders are sequentially numbered for control purposes, with fields that identify the quantity, price, and description of goods ordered, payment terms, discount factors, and date of delivery or performance.
14. **Termination.** An action by the trial court or contractor to unilaterally end all or part of the work under a contract.
15. **Termination for Convenience.** A contract clause giving the trial court the right to unilaterally terminate all or a portion of a contract without cause and for its own convenience. The contractor is paid the fair value of work performed up to the effective date of the notice of termination.
16. **Termination for Default (or Termination for Cause).** A contract clause giving the trial court the right to terminate a contract if the contractor fails to meet a material condition of the contract. If provided for in the contract, the contractor is responsible for any net increase in cost that the trial court may incur in completing the work upon termination for cause. A contractor may also terminate a contract for cause if the trial court does not meet its material obligations.
17. **Termination for Non-Availability of Funds.** A contract clause giving the trial court the right to terminate a contract if the funds required for payment under the contract are not appropriated or are otherwise unavailable to the trial court as anticipated.
18. **Warranty.** A contractual obligation of quality, utility, performance, condition, and durability made by a contractor for a project, product, or services.

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## **6.0 Text**

### **6.1 Introduction**

1. In simple terms, contract administration is the communication between the trial court and its suppliers and contractors that conveys the trial court's expectations, protects its contractual interests, and documents the activities associated with the contract including payment, contract compliance, disputes, etc. Contract administration is also intended to form relationships with suppliers and contractors to maximize the value of goods and services received by the trial court in terms of quality, delivery, price, and performance.
2. In general, trial court employees who perform contract administration activities are responsible for the following:
  - a. Acting only within the limits of their authority.
  - b. Authorizing contractual actions that are within authorized budgets or available funding.
  - c. Entering into contracts that comply with applicable laws, regulations, and procedures.
  - d. Ensuring contractor and trial court compliance with the terms of the contract.
  - e. Safeguarding the trial court's interests in its contractual relationships.
  - f. Ensuring that contractors receive impartial, fair, and equitable treatment.

### **6.2 Files and File Integrity**

#### **6.2.1 Supplier/Contractor Lists**

1. The trial court may develop a list of eligible suppliers and contractors that have expressed an interest in receiving

- solicitations. Over time and after repetitive procurements for the same items or services, the list for some items may stabilize and few new names may be added, even after an aggressive and comprehensive advertisement campaign. However, it is important to continue to “manage” the list, ensure it is kept current, and add firms that express an interest in participating in upcoming procurements. The trial court must ensure that a supplier or contractor is qualified prior to including it on a bidder’s list or making a contract award.
2. For every firm on the trial court’s supplier/contractor list, the following information should be included:
    - a. Firm name.
    - b. Tax identification number.
    - c. Firm address.
    - d. Point of contact information including telephone and fax numbers, and email addresses, etc.
    - e. The firm’s valid Seller’s Permit Number, if applicable.
    - f. Type of business (corporation, partnership, sole proprietorship, joint venture, parent company or subsidiary, etc.
    - g. Types of goods or services offered.
    - h. Firm’s status as a disabled veteran business enterprise (DVBE).
    - i. Year the firm was established.
    - j. The annual gross receipts of the firm.
  3. The trial court should maintain an up-to-date file and mailing list of contractors as follows:
    - a. Files will contain each firm’s data and any other information submitted, and trial court evaluation reports on completed work.

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- b. The pool of firms will be reviewed, updated, and/or renewed at least once each year.

### **6.2.2 File Integrity**

1. Files must be established and maintained for every procurement action. This requirement applies to the supplier or contractor selection process (pre-award) and to post-award contract administration, maintenance, and close-out. The requirement to maintain contract files is based on three standards of sound contract administration:
  - a. A contract administration system must ensure that contractors perform according to the terms, conditions, and specifications of their contracts or purchase orders.
  - b. Sound business judgment must be exercised in settling all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation and the administration of protests, changes, amendments, disputes, and claims.
  - c. Documentation of a fair and competitive procurement.
2. Contract files must be readily available to protect and support the trial court's best interests in the event of future claims, litigation, audits, reviews, or investigations. The following practices will ensure the integrity of trial court contract files:
  - a. Files shall be maintained in a safe and secure area.
  - b. Access to files should be on a "need to know" basis only, to minimize the potential for documents to be lost or misplaced.
  - c. Original files should not leave the building where they are filed under any circumstances until the contract work is completed. After completion and a holding period of six months, files may be sent to off-site storage. Policy No. FIN 12.01, Record



Retention, addresses the period of time that contract records must be retained.

- d. A procedure for making copies and releasing files to the public should be in place and consistently practiced to avoid losing files and records.<sup>1</sup>
  - e. A system such as the use of “out cards” should be set up to control accountability and mark the locations of files removed from the filing area. The assignment of a file administrator who has sole responsibility to pull files and file out cards is recommended.
  - f. Original file folders should be returned to their designated file locations at the end of the workday. An assigned file administrator should be responsible for assuring that files that leave the designated area are retrieved within a reasonable time.
  - g. Duplicate files and working papers should be discarded.
3. The trial court shall develop a filing method to facilitate the location of essential documents through the use of a consistent file format. One method of organizing contract files into distinct sections is presented below. Documents should be filed in reverse chronological order within each of the following file sections:
- a. **Correspondence** (with subsections for contractor [incoming], and trial court [outgoing]).
  - b. **Pre-Award/Solicitation** (includes bid RFP/IFB package, an abstract of all responses, etc.).
  - c. **Selection and Award** (includes all management input and approvals, notice of award, etc.).
  - d. **Contract** (with subsections for Amendments, Change Orders, and Notices, as appropriate).

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<sup>1</sup> Requirements relating to public access to records are described in the California Public Records Act, Government Code 6250-6276.48.

- e. **Reports, Progress Reviews, Schedules and Payment Requests/Invoices**
  - f. **Internal Documents** (memos, emails, records of meetings and telephone conversations, etc.).
  - g. **Miscellaneous** (price lists, resumes, brochures, etc.).
- 4. File set-up and maintenance is the responsibility of the trial court employee assigned to conduct the procurement.
  - 5. The trial court shall conduct reviews to assure its compliance with established file integrity requirements. At a minimum, these reviews shall be conducted on an annual basis. If necessary, a corrective action plan will be developed to address any unsatisfactory or non-conforming practices found during a review.

### **6.2.3 Supplier and Contractor Insurance**

- 1. Prior to commencing work, contractors that provide services must furnish certificates of insurance to evidence their compliance with trial court insurance requirements. The certificates must be of a form and content that is acceptable to the trial court.
- 2. Insurance carried by trial court contractors must be issued by an insurance company that is acceptable to the court.
- 3. Certificates of insurance must include the following provisions:
  - a. That coverage will not be canceled or materially changed except upon 15 days written notice to the trial court.
  - b. That the trial court, its officers, agents, employees, and servants are endorsed as additional insured, but only with respect to the work performed or items purchased for the trial court under this contract.

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4. The trial court shall assure that all required contractor certificates of insurance are current. Contractors that have current contracts with the trial court must provide new certificates on or before the expiration date of any certificates that are on file.
5. No payments should be made to the contractor until all required current and complete certificates of insurance are properly endorsed and on file with the trial court.

### **6.3 Contractor Performance and Payment**

#### **6.3.1 Performance and Delivery Control**

1. It is essential that the trial court monitor contractor performance to assure that the value of the goods or services it receives is commensurate with the contract price and meets prescribed acceptance criteria and contract milestone dates. The trial court employee responsible for contract administration, with feedback from the employee who requested the goods or services, shall ensure that the contractor's delivery or performance meets the court's expectations and requirements. See section 6.4 for procedures related to unacceptable contractor performance.
2. The person responsible for contract administration shall ensure that the supplies and services procured under each contract conform to quality, safety, quantity, and any other measures associated with quality assurance (e.g., warranties) as follows:
  - a. Monitoring contractor performance, quality, and warranty obligations when appropriate and necessary to protect the trial court's interests.
  - b. Ensuring that nonconforming supplies or services are rejected.

3. Monitoring contractor performance can be facilitated by the following suggested practices:
  - a. Conducting status reviews of contractor compliance at regularly scheduled project meetings (if required by the contract).
  - b. Requiring written monthly or quarterly reviews of the contractor's performance in meeting goals.
  - c. Requiring the contractor to propose and implement plans to cure unsatisfactory performance when contract goals are not met.
  - d. Performing a contractor evaluation at the conclusion of the contract and retaining it for future reference.

### **6.3.2 Contractor Payment**

1. Invoices shall be paid according to the terms and conditions set forth in the contract (e.g., net 30 days) as long as the supplier or contractor's performance meets contract requirements. Some contracts may call for payments at certain progress intervals or milestone events. It is the responsibility of the contract administrator to assure that invoices are:
  - a. Processed properly.
  - b. Not for duplicate payment.
  - c. For true obligations of the trial court.
  - d. For work that has been satisfactorily completed.
2. Some suppliers and contractors may offer discounts for prompt payment. The trial court may elect to accept these payment terms when it is in the best interests of the court, all financial and contractor performance factors considered.
3. Every effort should be made to pay suppliers and contractors for goods provided and services rendered in a timely manner

- according to the terms of the purchase order or contract. Unresolved payment problems can damage contractor relationships and lead to unnecessary administrative costs. Payment issues that cannot be resolved quickly and informally should be elevated to an appropriate level of trial court management before they lead to disputed claims or litigation. Contractors should be kept aware of the effort to remedy the payment issue until a final resolution is reached.
4. In no case should an undisputed portion of an invoice be withheld pending resolution of a disputed amount. If a portion of an invoice is in dispute, only the disputed portion of the invoice may be withheld from payment. The trial court shall pay the undisputed portions promptly. All correspondence related to a payment dispute must be kept in the procurement file including a description of the problem and efforts made toward resolution.

## **6.4 Contract Modifications, Disputes, and Terminations**

### **6.4.1 Contract Modifications and Amendments**

1. A contract modification is any **written alteration** to an existing contract's specifications, delivery point, rate of delivery, contract period, price, quantity, or other provision. Modifications, especially those that affect pricing or the overall contract dollar amount, should be accomplished bilaterally and include actions such as contract amendments, change orders, or notices exercising an option. [Note: A contract amendment must be made if exercising an option includes any change in funding].
2. Contract modifications must be authorized and signed by trial court officers and employees acting within the limits of their authority, the terms of the contract and applicable laws, rules, and regulations.

3. It is important to direct all correspondence regarding contract modifications and amendments, as well as disputes and terminations to the person or persons designated in the Notices section of the contract. Failure to provide notice to the appropriate person in a timely fashion may result in the loss of rights or claims under the contract terms and conditions.
4. Most contract modifications are issued in the form of contract amendments. Most contract amendments are bilateral (i.e., they are mutually agreed to by the trial court and the contractor). Contract amendments most frequently deal with changes to the work to be performed, time extensions, compensation for delays, and changes in the contract price due to any or all of the above.
5. A request for a contract amendment may be initiated by the trial court or the contractor. A contractor that requests a contract amendment must do so in writing on a timely basis according to the terms of the contract. The contractor must be able to support its entitlement to the contract amendment by documenting the factors that merit the change. Bilateral amendments must be executed on behalf of the contractor by a duly authorized officer.
6. In some instances the trial court may consider issuing a unilateral change amendment (i.e., a change amendment that does not require the acceptance or signature of the contractor or supplier). Unilateral amendments have the full force and effect of a contract amendment, but do not prejudice or limit any of the contractor's rights to make claims or appeal disputes under other provisions of the contract. Therefore, the trial court may only issue a unilateral amendment with the prior approval of the AOC.
7. Failure by the trial court and the contractor to agree to the terms and conditions of a requested contract amendment must be resolved according to the terms of the contract and/or the procedures for disputes and claims.

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## 6.4.2 Contract Amendment Administration

1. The trial court may issue a written amendment when a change can be accomplished within the provisions and scope of the underlying contract. After an amendment is signed by authorized individuals on behalf of the trial court and contractor, the contractor shall continue performance of the contract as changed.
2. The trial court shall include a “Changes” clause in each solicitation and contract to accomplish the following:
  - a. Specify the types of contract changes that may be made within the scope of the contract by written contract amendment and those that are immaterial and may be made by written change order.
  - b. Include provisions for adjustments in contract price, delivery schedules, and other contract terms that are appropriate to the type of contract.
  - c. Identify the person or persons who are authorized to approve contract modifications (i.e., the trial court officer or employee authorized to sign contract amendments and the project manager authorized to sign contract change orders).
3. After the trial court requests a change to the work, or if the contractor requests a change, the contractor must support its requested entitlement through the submittal of a timely proposal as follows:
  - a. The proposal must incorporate the appropriate rates and factors outlined in the contract for changes, extras, or delays (if applicable).
  - b. Contract amendments for consulting services are typically based on the contractor’s fee schedule that is included in the contract.

- c. On unit price or fixed-price line item contracts, the consideration for reductions in quantity shall be at the stated contract price. Proposed increases in fixed contract line item prices or labor rates must be supported to the satisfaction of the trial court.

In some cases (e.g., the addition of hours to a time and materials contract or a simple time extension) it may be appropriate for the court to prepare the contract change without a proposal from the contractor. The trial court shall exercise its judgment and discretion in determining when a proposal from the contractor is needed.

- 4. The contractor must submit a request for a change to a contract within the time frame specified in the contract, or within a mutually agreed upon time if the contract does not specify such a time.
- 5. Some of the following steps may be applicable to the negotiation of changes in the contract cost, schedule, and/or other contract terms:
  - a. **Written Pre-negotiation Objectives.** The trial court may require that written pre-negotiation objectives be established for contract modifications. This is a useful step that establishes the trial court's goals and any limitations associated with the upcoming negotiation and assures that the negotiations are conducted to achieve the trial court's objectives regarding the contract scope, cost, schedule, and terms and conditions. The prenegotiation objectives are for internal trial court purposes only. They are not shared with the prospective contractor or incorporated into the contract itself.
  - b. **Written Memorandum of Negotiations.** A written memorandum shall be prepared by the contract administrator to record the results of negotiations. The memorandum is a summary of negotiations that sets forth the agreement between the parties on major issues (e.g., price, delivery, performance



time, payment terms and any special provisions to be included in the contract). The memorandum shall explain the differences, if any, between the negotiated price adjustment and the pre-negotiation position. When there are numerous differences involving significant sums, a tabular format should be used to show the price differences, and the differences should be explained in the narrative accompanying the tabulation. For small purchases, the reconciliation can be handwritten on the requisition or other suitable file document.

- c. **Lock in the Settlement.** To avoid subsequent controversies that may result from an amendment:
    - i. Ensure that all elements of the modification have been presented and resolved.
    - ii. If directed by general counsel, include a release statement in the modification, in which the contractor releases the trial court from any liability for further modifications attributable to the facts or claims giving rise to the contractor's proposal for adjustment, unless specific exceptions are expressly set forth in the release statement. This should be done under the guidance of counsel.
6. No contract modification requested by the contractor shall be allowed if it is not within the original scope, fully justified to the trial court's satisfaction, reasonably priced, and in compliance with the terms of the contract. Further, no modification will be considered if the contractor does not provide notice of a requested contract amendment to the trial court on a timely basis (if defined in contract) or after final payment of the contract.
7. Failure of the trial court and any supplier or contractor to agree on the terms of a change modification must be resolved according to the terms of the contract and/or the procedures for disputes and claims.

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### 6.4.3 Contract Disputes

1. Contract disputes generally arise when the trial court and the supplier or contractor disagree about the interpretation of contract language, specifications, schedule, price, or other issues that impact performance, completion, payment, amendments, claims, or other contract rights.
2. Minimizing and settling disputes before they become claims is one goal of contract administration. Trial court employees responsible for contract administration should anticipate and minimize potential unresolved disputes and claims that can disrupt operations and overrun budgets. The trial court must work with its contractors and suppliers and communicate effectively to develop a clear understanding of the court's performance expectations.
3. The best forum for dispute resolution is often an informal meeting, conducted between the parties who are most knowledgeable of the facts and who have the authority to make decisions. These meetings should be conducted whenever the trial court denies a significant contractor request for a modification or has expressed a contrary view of the contract requirements. Resolving contractual issues by mutual agreement at the lowest appropriate level of authority is a worthwhile goal.
4. Although two-way communication is essential to developing a mutual understanding of the issues, all contractor-requested modifications or expressed differences in the interpretation of contract terms and requirements must be submitted in writing. The trial court will not compromise on issues of integrity or clear entitlement under the contract documents. However, there is often a middle ground that is fair and equitable to both parties.

#### **6.4.4 Contract Claims**

1. If a dispute cannot be resolved to the satisfaction of the parties informally as discussed above in subsection 6.4.3, the contractor can submit a formal written claim. A claim is a written demand that may result from the trial court's denial of the contractor's modification request or invoice, unilateral contract amendment, rejection of work, or the failure of good faith efforts to resolve disputed issues through informal communication or meetings. Claims seek the payment of money, a time extension, adjustment or interpretation of the contract terms, or other appropriate relief. A claim may or may not be allowed, depending on the provisions of the contract (e.g., if the dispute resolution provision directs that disputes be submitted to binding arbitration as a final step.)
2. Contractor claims must be submitted to the trial court on or before the date of final payment. All claims must be submitted in writing, follow the general format established by the contract, and include the narrative description and documents necessary to substantiate the contractor's position. Contractors must always consult the contract, follow the specific guidelines, and use the referenced forms provided therein (if any).
3. The processing, review and research of contractor claims, along with participation in the dispute resolution process, is primarily the responsibility of the trial court employee to whom contract administration duties are assigned.
4. The trial court will respond in writing to all properly filed contractor claims within the time limits established by contract or as mutually agreed by the court and contractor.
5. The trial court will seek to resolve all claims in a fair and equitable manner by the most expeditious and cost-effective means possible. The trial court will first seek a remedy by reviewing the contract and all applicable documents to find an equitable solution

within the scope of the contract. If the claim has merit, the contract administrator should prepare a negotiation settlement memorandum. The authorization process is the same as for a contract modification (i.e., a contract amendment is issued). Proper approvals are required before a formal written response can be made offering the contractor a monetary settlement or other remedy.

6. The trial court will make a written determination as to the merit and entitlement of the contractor's claim and submit the response to the contractor within the time specified in the contract or as mutually agreed.
7. Unless otherwise noted in the contract, if the contractor disputes the trial court's written response, the court (with guidance from the general counsel) will inform the contractor that it may petition the appropriate court and it may wish to consult an attorney.
8. Any settlement of a claim shall include a release statement in which the contractor releases the trial court from any liability with respect to the settled claim unless specific exceptions are expressly set forth in the release statement.
9. The trial court may have reason and contractual authority, either during contract performance or the warranty period, to initiate claims against a contractor. The court shall attempt to informally settle all claims against the contractor. If informal efforts are unsuccessful, the trial court must give the contractor written notice of its complaint and an opportunity to take corrective action, as follows (unless otherwise directed in the contract):
  - a. The written notice to the contractor detailing the complaint is called a Cure Notice. The Cure Notice informs the contractor that it is deficient with respect to one or more contractual obligations. The contractor is further advised that if the deficiency is not cured within the prescribed time frame, the trial

court may initiate specific remedies up to and including issuing a Termination for Cause.

- b. If the contractor fails to meet the demands of the Cure Notice after a reasonable time, or take corrective steps leading to the necessary corrections, the trial court will take appropriate action.
- c. If the court must take action to correct the failures of the contractor, appropriate back-charges will be assessed against the contractor. If available, offsets against amounts owed to the contractor should be taken.
- d. Major contracts should include warranty provisions that give the trial court the right, after giving the contractor due notice of a defect and reasonable time to correct it, to replace, repair, or otherwise remedy the defect at the contractor's expense. All demands against the contractor must be in keeping with the applicable contract terms and the contractor's reasonable contractual obligations.

#### **6.4.5 Contract Terminations**

Each trial court contract must contain provisions that address the potential for termination, how terminations are accomplished, and the basis for termination.

##### **Termination for Convenience**

1. All trial court contracts shall contain provisions that allow the court to terminate the contractor's performance for the convenience of the court. The "Termination for Convenience" contract clause allows the trial court, at its sole option and discretion, to terminate the contract in whole or in part, without any liability other than payment for work already performed, up to the date of termination. Contracts shall be terminated for convenience only when such a termination is found to be in the trial court's best interests.

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2. Trial court contracts shall set forth the method for compensating the contractor for work already performed upon termination for convenience.
3. Written notice to the contractor is necessary to terminate (all or part of) a contract for convenience. Such notice will state that the contract is being terminated pursuant to the termination for convenience provision of the contract, the effective date of the termination, the extent of termination, and instructions to the contractor to cease performance under the contract.
4. Trial court contracts should not allow a termination for convenience by a contractor.

#### **Termination Due to Non-Availability of Funds**

1. All trial court contracts must contain a clause allowing termination in the case of non-availability of funds. The trial court shall be allowed to terminate the contract if expected or actual funding is withdrawn, reduced, or limited in any way prior to the expiration of the contract. The contractor shall be provided written notice of such a termination.
2. In the event of a termination in whole or in part due to the non-availability of funds, the contractor shall be paid for services rendered up to the effective date of termination. The contractor shall also be released from any further obligation under the contract with respect to the cancelled portion of the contract.
3. Contracts that extend beyond the current fiscal year shall specify that the contract is conditioned upon the appropriation of sufficient funds by the applicable legislative authority. If sufficient funds are not appropriated, this type of contract is subject to termination at the conclusion of the fiscal year through which funds are available.

### **Termination for Cause**

1. Trial court contracts will contain a Termination for Cause clause to protect the court in the event of a contractor or supplier default.
2. Contractors shall be provided with a reasonable written notice of any termination for cause. The contractor shall also be provided an opportunity to be heard.
3. For situations other than a breach of contract, the contractor shall be notified by a written Cure Notice of the cause or causes of the deficiency and advised that if the deficiency is not “cured” within the time prescribed in the contract, the trial court shall immediately initiate the contract termination process and hold the contractor and his sureties liable for associated costs and liquidated damages (if applicable).
4. If a contractor fails to (i) respond in a timely manner, or (ii) fails to satisfactorily cure the default, the trial court shall issue a Notice of Default.
5. If included as a provision to the contract, and a contractor's right to proceed is terminated for cause, the trial court may take over and complete the work or cause it to be completed by other appropriate means to protect the court's interests. The contractor shall be liable to the trial court for any increased costs incurred by the trial court associated with completing the work. In addition, the contractor may be liable for actual or liquidated damages, depending on the terms of the contract.

#### **6.4.6 Contract Work Suspensions**

1. If a temporary delay is a possibility, a Suspension of Work provision should be included in the contract. In accordance with the contract terms, and as the need arises, the

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trial court may issue a written order to the supplier or contractor to suspend, delay, or interrupt all or any part of the work for the period of time that the trial court determines appropriate.<sup>2</sup>

2. If the performance of all or any part of the work of the contract is delayed or interrupted (i) by an act of the trial court in the administration of the contract that is not implied or expressly authorized by the contract, (ii) by a failure of the trial court to act within the time specified in the contract (outside of a force majeure), or (iii) within a reasonable time if not specified, an adjustment shall be made for an increase in the cost and time of performance of the contract caused by the delay or interruption and the contract shall be modified accordingly.
3. The Suspension of Work provision should state that the trial court is not liable for the contractor's loss of anticipated profits in the event of a suspension of work.

## **6.5 Warranties**

1. A warranty is a contractual obligation that protects the trial court from product defects and poor workmanship. The trial court shall obtain warranties for the goods and services it procures.
2. The trial court should take advantage of commercial warranties where appropriate and in the court's best interests for the repair and/or replacement of commercial items.
3. When acquiring a warranty, the trial court should consider the following factors:
  - a. The nature and use of the supplies and services including their:
    - i. Complexity and function.
    - ii. Stage of development and technological advancement.

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<sup>2</sup> Suspensions should include a time limit, after which the provisions of the suspension clause should be clear that the work will either resume or one of the termination clauses will go into effect.



- iii. End use.
  - iv. Expected useful life.
  - v. Difficulty in detecting defects before acceptance.
  - vi. Potential harm to the court if the item is defective.
  - b. Cost. Warranties for specific durations are sometimes offered at additional cost. In addition, there is a cost to the trial court for this type of warranty administration and enforcement.
  - c. Administration and enforcement. The trial court's ability to track and enforce warranty provisions is essential to warranty effectiveness. If the court is unable to enforce warranties systematically, warranty coverage beyond customary trade practice should be scrutinized.
  - d. Trade practice. In many cases, warranties are included as part of the basic price of an item. If there is no price difference, the court should obtain the warranty.
4. To facilitate pricing evaluations and enforcement, the trial court should ensure that warranties clearly state: (i) the exact nature of the product or services that the contractor warrants, (ii) the extent of the contractor's warranty, including the specific duration, and (iii) the specific remedies available to the court in the event of a defect.

## **6.6 Contract Closeout**

1. The trial court shall properly close out all purchase order and contract files.
2. Closing out routine purchase orders and contracts for commodities and other commercial products should be straightforward. The trial court employee responsible for contract administration shall ensure that goods and services have been accepted and conform to the purchase order or contract specifications. Delivery and acceptance should be documented in the file, which should also include any

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descriptive literature or warranty documentation. There must also be documentation confirming final payment by the accounts payable department.

3. Upon the authorization of final payment, contract files may be closed-out. Closing out contract files may consist of, but is not limited to, assuring that all pertinent documentation is included in the file, disencumbering any remaining funds (if appropriate), completing any required contractor performance evaluation, and sending the file for appropriate storage and retention. Files should be maintained onsite for six months after contract closeout, after which they may be sent for offsite storage and retention.

## **6.7 Reporting**

1. The trial court should track its purchasing and contracting activities and prepare summary reports that enable the court to monitor procurement activity, identify trends, and track progress against goals and objectives.
2. The trial court should maintain a data base that allows the retrieval of procurement information that may include but is not limited to:
  - a. The total number of requisitions processed.
  - b. The total dollar amount expended on purchase orders and contracts.
  - c. The average dollar amount per purchase order or contract.
  - d. The dollar amount spent with particular contractors or suppliers.
  - e. The total dollar amount spent and the number of procurements placed with DVBES.
  - f. The total dollar amount spent and the number of procurements placed for consulting services.

## **7.0 Associated Documents**